

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12967 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ANAND VIHAR CO-OP.HSG.SOCIETY LTD.

Versus

MADHUBEN B. SOLANKI

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Appearance:

MR SV PARMAR for Petitioner

MR KS JHAVERI for Respondent No. 1

MS S.D.TALATI ASSTT. GP for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/03/98

ORAL JUDGEMENT

This petition is preferred by one Anand Vihar Cooperative Housing Society Ltd. of which the respondent No. 1 claims to be a member. The petitioner challenges the judgment and order dated 20th April, 1992 of the Board of Nominee passed in Lavad Suit No. 512 of 1985 and the judgment and order dated 28th October, 1993 of

the Cooperative Tribunal passed in Appeal No. 160 of 1992. The facts leading to the present petition are as under :

2. The petitioner is a Cooperative Housing Society (hereinafter referred to as "the Society") which was initially formed and registered in the year 1960 as Patninagar Cooperative Housing Society. Respondent NO. 1 claims to be a member of the said society. It is her claim that she was inducted as a member of the society some time in the year 1971 and she has paid a sum of Rs. 12,161/- to the society. She, therefore, demanded allotment of one of the residential tenement which were constructed by the society some time in the year 1982. It appears that initially there was a dispute regarding her seniority as a member which would determine her priority in the matter of allotment of the tenement. Feeling aggrieved, the petitioner filed Lavad Suit No. 30 of 1981 and demanded that she was at serial No. 15 and claimed priority accordingly. Pending the said suit, construction had commenced and allotment of tenement was made in the month of November, 1982. Since the respondent No. 1 was not allotted tenement, she filed Lavad Suit No. 628 of 1982 before the Board of Nominee and prayed that she be handed over possession of a tenement constructed by the petitioner Society.

3. It further appears that on 20th January, 1981, the society forwarded a proposal to the District Registrar of Cooperative Societies, Ahmedabad to approve the list of the members of the Society. Said proposal was processed and under communication dated 19th February, 1981 (Exh. 46), the District Registrar of Cooperative Societies approved the list of 24 members. In the said list, the name of the respondent No. 1 appears at item No. 24. The communication also refers to the pending Suit NO. 30 of 1981 and that the inclusion of the name of respondent NO. 1 at item No. 24 would be subject to the result of the said litigation. It would not be out of place to note here that the Suit No. 30 of 1981 is confined only to the placement of respondent No. 1 in the list of members. I am informed that the said Suit No. 30 of 1981 is still pending before the Board of Nominee.

4. Suit No. 628 of 1982 which was later on renumbered as Lavad Suit No. 512 of 1985 was contested by the petitioner society. It was the case of the society that the respondent No. 1 was not a member of the society. Since she was not a member of the society, the suit before the Board of Nominee was not competent

and the Board of Nominee had no jurisdiction whatsoever to entertain and decide the dispute raised by the respondent No. 1. It was contended that at the relevant time, brother of the respondent No. 1 was one of the members of the Managing Committee and he manoeuvred to induct the respondent No. 1 as a member of the society. It was further contended that the respondent No. 1 was never recognized as a member of the society and since the present Managing Committee took over in the year 1979, no communication has been sent to respondent No. 1 as a member of the society. The Board of Nominee tried the suit and recorded a finding that the respondent No. 1 was inducted as a member of the society in the year 1971 and that she had paid a sum of Rs. 12,161/- to the Society. The Board also recorded a finding that the petitioner society failed to establish that at the relevant time, brother of the respondent No. 1 was a member of the Managing Committee as alleged; it also did not take any action against any of the erring office bearers of the society. The Board also found that initially the society was formed for the benefits of the members of a particular community. The original members thereafter resigned some time after the year 1976 and the new members were inducted. The new members did not belong to the same community and the new members, therefore, were not willing to accept the respondent No. 1 as one of the members of the society. The Court, therefore, allowed the suit and declared that the respondent No. 1 was a member of the society and directed the society to hand over one property to her out of the vacant properties lying with the society. Feeling aggrieved, the society preferred appeal No. 160 of 1992 before the Cooperative Tribunal which too has been dismissed. Review preferred by the society has been dismissed on 28th October, 1993. Feeling aggrieved, petitioners have preferred the present petition.

5. Mr. Parmar, the learned advocate has appeared for the petitioners. At the first instance, he argued that he was not prepared and he be granted time for a day. Request was rejected. The matter was taken up in accordance with its serial order. The matter was taken up for hearing at around 3.30 p.m. on 3rd March, 1998. Though the learned advocates were notified, nobody attended to the matter. Mr. Jhaveri, the learned advocate appearing for respondent No. 1 appeared before the Court at around 4.00 p.m. and he was permitted to commence the arguments. Today also, Mr. Parmar did not attend to the matter for nearly one hour and I, therefore, do not consider the request to be just.

6. Mr. Parmar has relied upon rule 14 of the Gujarat Cooperative Societies Rules, 1965 (hereinafter referred to as "the Rules") and bye laws 7 and 10 of the society. Rule 14 of the rules relates to when the right of member can be exercised. Said rule provides that no person shall exercise rights of a member of a society unless (a) he has paid an entrance fee as laid down in the by law of the society; (b) he has subscribed for at least one year and made payment towards share money as laid down in the by laws of the society; (c) he has fulfilled all such conditions as laid down in the bye laws of the society for exercising right of the membership. Bye law 7 referred to by Mr. Parmar lays down the procedure for processing of an application made for admission as a member of the society. Bye law 10 referred to by Mr. Parmar provides that the application should be signed by the applicant. It further provides that the society shall not take decision not to admit the applicant whose name has been submitted alongwith the application for registration of the Society without prior approval of the District Registrar of Co-op. Societies. He has further submitted that the respondent No. 1 not being the member of the society, the Board of Nominee could not have entertained the dispute under section 96 of the Gujarat Cooperative Societies Act, 1961.

The petition has been contested by Mr. Jhaveri. He has supported the findings recorded by the Board of Nominee and the Tribunal has submitted that in view of the concurrent finding recorded by both the Courts below, the judgments of the lower courts need not be interfered with. He has further contended that the copy of the judgment and order of the board of nominee supplied by the petitioner and annexed to the petition at annexure is absolutely illegible and the petition requires to be dismissed on that ground alone.

It is true that the copy of the impugned judgment annexure-D to the petition is absolutely illegible and Mr. Jhaveri had to supply legible copy thereof for the perusal by the Court. I, however, do not consider it expedient to dismiss the petition on that ground alone.

The petition is directed against the judgment and orders of the Board of Nominee and the Cooperative Tribunal. Petition is, therefore, essentially one under Article 227 of the Constitution of India. Both the Courts below have found that the respondent No. 1 was inducted as a member of the society some time in the year 1971 and she has paid a sum of Rs. 12161/- to the society. Mr. Parmar has submitted that since the

brother of respondent New was a member of the Managing Committee of the society, respondent No. 1 has wrongfully been inducted as a member of the society. Next, he argued that the respondent No. 1 has never been inducted as a member of the society and no resolution to that effect has been passed. I believe that the arguments advanced by Mr. Parmar are self-contradictory. The moment it is argued that the person is wrongfully inducted as a member of the society, it presupposes that the person has been inducted as a member of the society. If a person has wrongly been inducted as a member of the society, appropriate action for expelling such member can be taken by the society which has not been done in the present case. Further, there are no elaborate grounds made out on the basis of which the membership of the respondent is disputed. Mr. Parmar has submitted that no application was ever made by respondent No. 1. No such application was ever accepted by the society and no resolution to that effect was passed by the society. He has submitted that it was the contention of the respondent No. 1 that on resignation of the original member one Gangaram, respondent No. 1 was inducted as a member of the society. Mr. Parmar has, however, not produced pleadings of the parties even for perusal by this Court. On perusal of the judgment of the Courts below, it appears that it was the defence of the society that on resignation of the original member Gangaram, respondent No. 1 was inducted as a member in his place surreptitiously by her brother. No defence disputing the membership of respondent No. 1 was ever taken by the society in Lavad Suit No. 30 of 1981 preferred by respondent No. 1. Thus, the facts do indicate that the dispute in respect of the membership of respondent No. 1 raised by the society is not genuine or bonafide. The Board of Nominee, therefore, cannot be said to have acted without jurisdiction.

Mr. Parmar has also contended that the findings recorded by the Board of Nominee are perverse. He has submitted that there has been no precise finding as to the date on which respondent No. 1 was admitted to the membership of the society. He has submitted that on three different places, three different dates are referred to by the Board of Nominee. I am afraid, I cannot accept the contention raised by Mr. Parmar. What is referred to by Mr. Parmar at different places is recording of pleadings of the society and respondent No. 1 and the finding recorded by the Court. Mr. Parmar has failed to establish that the findings recorded by the Board of Nominee and confirmed by the Tribunal are perverse or are result of non application of mind.

Bye laws 7 and 10 of the society relied upon by Mr. Parmar lay down the procedure to be followed by the society for processing the applications made by the prospective members. Said provisions do not lend any support to the arguments advanced by Mr. Parmar. Rule 14 of the Rules referred to hereinabove also lays down conditions precedent required to be followed by a member of the society to exercise rights of a member. Same cannot be held to be the prerequisite for being a member of the society. Mr. Parmar has submitted that neither respondent No. 1 has paid any entrance fee nor has she subscribed to the share of the society; no share certificate has been issued in favour of respondent No.1 and no resolution has been passed admitting respondent No.1 as a member of the society. These facts have also been noted by both the Courts below. The Courts have observed that the society has not produced all the records of the society with an ulterior motive. The society had defended the action and had contended before the Courts below that the former Managing Committee had not handed over all the records of the society to the New Managing Committee. The contention has not found favour with the Courts below. The Courts below have recorded a categorical finding that the society has suppressed relevant material from Court. Mr. Parmar has not been able to explain acceptance of Rs. 12,161/- from the respondent No. 1. He has also failed to establish that at the relevant time, the brother of the respondent No. 1 was one of the members of the Managing Committee. In my view, therefore, the Courts below are right in holding that the respondent NO. 1 is a member of the society and in directing the society to hand over the possession of one of the properties lying with the society.

No other contention has been raised before me. In view of the above discussion, petition is dismissed. Rule is discharged. Interim relief is vacated. The petitioner shall pay the costs of this petition to respondent No. 1. Cost is quantified at Rs. 5,000/(Rupees five thousand only). Respondent No. 2 shall bear its own costs.

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Vyas